D.P.U. 92-3C-1A

Application of Commonwealth Electric Company, under the provisions of G.L. c. 164, § 94G, and the Company's tariff, M.D.P.U. No. 272, for approval by the Department of Public Utilities of a change in the quarterly Fuel Charge to be billed to the Company's customers pursuant to meter readings in the billing months of October, November, and December 1992.

Application by Commonwealth Electric Company for approval by the Department of Public Utilities of rates to be paid to Qualifying Facilities for purchases of power pursuant to 220 C.M.R. §§ 8.00 et seq. and M.D.P.U. No. 251. The rules established in 220 C.M.R. §§ 8.00 et seq. set forth the filings to be made by utilities with the Department, and implement the intent of § 201 and 210 of the Public Utility Regulatory Policies Act of 1978.

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Petitioner

ORDER ON MOTION BY COMMONWEALTH ELECTRIC COMPANY FOR RECONSIDERATION

I. INTRODUCTION

On November 3, 1994, the Department of Public Utilities ("Department") issued its Order in review of the Commonwealth Electric Company's ("Commonwealth" or "Company") generating unit and system performance with respect to the Company's performance programs for the performance year 1991 through 1992. Commonwealth Electric Company, D.P.U. 92-3C-1 (1994) ("D.P.U. 92-3C-1"). The Department imputed to the Company findings of imprudence regarding a forced outage at Vermont Yankee Nuclear Plant ("Vermont Yankee") that began on April 23, 1991 ("Vermont Yankee Outage"); and an extension of a refueling outage at the Pilgrim Nuclear Plant ("Pilgrim") that began on May 4, 1991 ("Pilgrim Outage"). Id. at 12-13. On November 23, 1994, the Company submitted a Motion for Reconsideration of D.P.U. 92-3C-1 ("Motion for Reconsideration").[1]

II. MOTION FOR RECONSIDERATION

A. Standard of Review

The Department's policy with respect to reconsideration is well

[1] With its Motion for Reconsideration, the Company submitted a Motion for Extension of the Judicial Appeal Period ("Motion for Extension"). On December 6, 1994, the Department approved the Motion for Extension.

established. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision after review and deliberation. Fitchburg Gas and Electric Light Company, D.P.U. 18296/18297, Supplemental Order at 2 (1976). It should not attempt to reargue issues considered and decided in the main case. Id.; Boston Edison Company, D.P.U. 92-1A-B at 10,14 (1993); Western Massachusetts Electric Company, D.P.U. 92-8C-B at 6-8 (1993).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered.[2] Boston Edison Company, D.P.U. 92-1A-B at 8,13,19 (1993); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1981). Alternatively, a motion for reconsideration may be based on the fact that the Department's treatment of an issue was the result of mistake or inadvertence. Boston Edison Company, D.P.U. 92-1A-B at 8,14,19 (1993); Western Massachusetts Electric Company, D.P.U. 91-8C-B at 6-7 (1993); Boston Edison Company,

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[2] The Department has denied reconsideration when the request rests on an issue or on updated information presented for the first time in the motion for reconsideration. See generally Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987).

D.P.U. 1350-A at 5 (1983).

B. Position of the Company

1. Introduction

The Company states that its Motion for Reconsideration meets the standards for reconsideration (Motion for Reconsideration at 2). The Company contends that the Motion for Reconsideration relies upon new facts that are material and should affect the Department's decision, and upon substantive reasons why the Department's decision is a mistake (id.). Further, the Company states that because no party or the Department raised either the Vermont Yankee Outage or the Pilgrim Outage as an issue, the Motion for Reconsideration does not seek to reargue issues previously considered and decided (id.).[3]

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[3] In addition, the Company states that it had no notice that either the Vermont Yankee Outage or the Pilgrim Outage would be a potential basis for cost disallowance (Motion for Reconsideration at 2). The Company raises, but does not argue, due process concerns with such procedures. It is difficult for the Department to fathom such a claim. With respect to the Vermont Yankee Outage, the Department conducted Commonwealth's proceeding concurrent with Cambridge Electric Light Company's proceeding, and determined the prudence associated with the Vermont Yankee Outage in Cambridge Electric Light Company, D.P.U. 91-2C-1 (1993). The Department determined the prudence associated with the Pilgrim Outage in Boston Edison Company, D.P.U. 92-1A-A (1993). The Company has a long and litigious history with respect to the imputation of imprudence associated with the operation of Pilgrim. See Commonwealth Electric Company, D.P.U. 1003-G-6 (1982); affirmed in Commonwealth Electric Company v. Department of Public Utilities, 397 Mass. 361 (1986).

2. Vermont Yankee

The Company contends that facts that were unknown to the Department bear upon the propriety of disallowing incremental replacement power costs for the Vermont Yankee Outage (id.). First, the Company states that, because it was pending Federal Energy Regulatory Commission ("FERC") review during the time of the Vermont Yankee Outage, the Company's entitlement was contingent and interim, and FERC acceptance was necessary before the arrangements could be a legally valid and effective long-term contract (id. at 3).

Further, the Company states that because no purchase entitlement existed at the time of the setting of performance goals, no performance goals for Vermont Yankee for the 1991-1992 performance period were established (id.). The Company contends that the Department neither sets performance goals for, nor reviews the performance of units from which an electric company purchases power unless the contract is a long-term contract which extends over the entire performance period (id. at 3-4, citing Commonwealth Electric Company, D.P.U. 86-69 at 16 (1986)). The Company contends that performance of plants under arrangements other than long-term approved contracts are not generally the subject of review and cost disallowance (id. at 4).

Second, the Company contends that, because of its Vermont Yankee purchase, the Company reduced its purchase of Canal #2, and

that this allowed the Company to avoid its allocated share of incremental replacement power costs relating to a Canal #2 outage in April 1991 (id. at 3). The Company contends that because the Department did not find that the Canal #2 outage resulted from any imprudence, any disallowed costs relating to the Vermont Yankee Outage must be offset by the Canal #2 outage costs that were in essence avoided by the Vermont Yankee purchase (id.).

3. Pilgrim

The Company contends that disallowance of the incremental replacement power costs resulting from the Pilgrim Outage should be reconsidered both because of facts not previously known by the Department, and because the Department's Order leads to results that are contrary to policies important to the Department and undermine the achievement of Department goals (id. 4). The Company states that the nature and extent of the Company's efforts to monitor the operation of Pilgrim combined with the benefits to the Company's customers obtained in a settlement approved by the Department in connection with a prior Pilgrim outage are facts that were not previously known to the Department (id. at 4-5).[4] The Company contends that where

[4] The Department approved contract changes that allowed access to information regarding operation and capital expenditures at Pilgrim as part of a settlement agreement (Motion for Reconsideration at 5, citing Commonwealth Electric Company,

contract amendments obtained in the Pilgrim settlement establish circumstances where Boston Edison Company ("BECo") is responsible for the Company's incremental replacement power costs, a showing of the Company's prudent actions should be sufficient to avert a disallowance based upon imputed imprudence (id. at 5-6). The Company contends that its actions with respect to the Pilgrim Outage were prudent (id. at 6).

In addition, the Company states that failure to reconsider the disallowance of the incremental replacement power costs resulting from the Pilgrim Outage will undermine the Departments policies and goals favoring vigilant oversight and aggressive enforcement of contract rights (id.). The Company contends that appropriate actions to monitor plant operation should insulate it from an imputed imprudence disallowance (id.). The Company contends that this result is consistent with the Department's policies and goals of structuring regulation to encourage efficient behavior (id. at 6-7).

C. ANALYSIS AND FINDING

1. Vermont Yankee

The Company contends that the fact that FERC approval of the purchased power contract was pending is a previously unknown or

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D.P.U. 89-3C-2 (1990).

undisclosed fact that would have a significant impact upon the decision already rendered. The Company contends that had the Department known this information, it would not have imputed the imprudence resulting from the Vermont Yankee Outage.

The Department has found that the setting of performance goals is a complement to its performance review responsibilities. Commonwealth Electric Company, D.P.U. 86-69, at 16. Further, units for which an electric company has a long-term power contract to receive power are considered by the Department to be in a electric company's system for purposes of review under G.L. c. 164, § 94G. Id. It was not the intent of the Legislature, in enacting G.L. c. 164, § 94G, to restrict the Department's review. Id. at 16-17. See Commonwealth Electric Company, 397 Mass. 361 (1986). In purchasing power from Vermont Yankee, Commonwealth may not delegate its statutory obligation under G.L. c. 164, § 94G for the prudent generation of that power.

It is not the inchoate FERC approval, nor the fact that performance goals had not been established for the unit underlying the power purchase agreement that determines the applicability of G.L. c. 164, § 94G to this transaction, but the fact that the Company may not delegate its responsibility for providing service at the lowest possible cost. The previously unknown or undisclosed fact that FERC approval was pending with respect to the power purchase from Vermont Yankee

would not have had a significant impact upon the Department's decision. Accordingly, the Motion for Reconsideration with respect to the Vermont Yankee Outage is denied. Further, the Company's request that disallowed costs relating to the Vermont Yankee Outage be offset by the Canal #2 outage costs that were in essence avoided by the Vermont Yankee purchase is denied. It is well established that the ratepayers are not the guarantors of the success of the Company's decisions, and shareholders must, in this instance, accept the risks of the Company's decision to rely in part on Vermont Yankee. See Commonwealth Electric Company, 397 Mass. 361 (1986).

2. Pilgrim

The Company contends that its diligence in monitoring the Pilgrim Outage is a previously unknown or undisclosed fact that would have a significant impact upon the decision already rendered. It is well established that the Company may not delegate its responsibility for providing service at the lowest possible cost. See Commonwealth Electric Company, 397 Mass. 361 (1986). As noted, the Department determined the prudence of BECo associated with the Pilgrim Outage in Boston Edison Company, D.P.U. 92-1A-A (1993) ("D.P.U. 92-1A-A"), and imputed a finding of imprudence to Commonwealth. This is wholly within the Department's responsibility of administering its statutory regulatory scheme. See Commonwealth Electric Company, 397 Mass.

361 (1986); see also, Fitchburg Gas and Electric Light Company v. Department of Public Utilities, 394 Mass. 671 (1985). The Department has found that the imputation of imprudence encourages vigilant oversight by those who have delegated their responsibilities.[5] Commonwealth Electric Company, D.P.U. 86-69, at 17 (1986). See Commonwealth Electric Company, 397 Mass. 361 (1986). While the extent and nature of the Company's efforts to monitor the operation of Pilgrim may provide for contract remedies, they are not relevant to the prudence of BECo associated with the Pilgrim Outage. The Department does not find that this is contrary to policies and goals of structuring regulation to encourage efficient behavior. The previously unknown or undisclosed efforts by the Company to monitor the Pilgrim Outage would not have had a significant impact upon the Department's decision. Accordingly, the Motion for Reconsideration with respect to the Pilgrim Outage is denied.

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[5] The Company stated that the settlement in D.P.U. 89-3C-2 allowed the Company to dispute capital, and operations and maintenance expenditures, and that if expenditures were the result of failures to meet good work practices, the Company could obtain a refund (Motion for Reconsideration, Exh. A at 3). The Company stated that it reviewed all information relating to the Department's finding of imprudence associated with the Pilgrim Outage, and determined that the work conformed to industry practice and was not a basis for a refund (id. at 4). The Department reached a different conclusion. D.P.U. 92-1A-A at 11-27.

III. ORDER

After due consideration, it is

ORDERED: That the Motion for Reconsideration of Commonwealth Electric Company is denied.

By Order of the Department,

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Kenneth Gordon, Chairman

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Mary Clark Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).